**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

WARREN WEDDINGTON	:	**MISCELLANEOUS**
v.	:	
COMMONWEALTH OF	:	
PENNSYLVANIA	:	**NO. 08-mc-004**
IN RE:	:	**CRIMINAL**
	:	
WARREN WEDDINGTON	:	**NO. 08 -cr-** _____

MEMORANDUM AND ORDER

I.   ALLEGATIONS MADE BY PETITIONER.

Petitioner filed a petition in this Court on January 9, 2008, which was

labeled by the Clerk of this Court as 08-mc-004. In this petition, petitioner alleges

that the following incidents of fact occurred:

1.   that he was convicted of "burglary and related offenses" in the Court

of Common Pleas of Philadelphia County, Pennsylvania on

November 6, 2003; and

2.   that as a result of this said conviction, he was sentenced on March 8,

2004 to a term of incarceration for thirty to sixty months, to be

followed by three years of "reporting probation;" and

3.   that he did not appeal either his conviction or his sentence in a timely

manner, but that on January 25, 2005, he was granted leave to

appeal *nunc pro tunc*, and that he then filed a timely appeal to the

state Superior Court; and

4.   that on August 30, 2006, his appeal resulted in the Superior Court

vacating his sentence of restitution, but affirming the actions of the

Common Pleas Court concerning all other aspects of his conviction

and sentence, and that these findings were affirmed by the Supreme

Court of Pennsylvania on January 31, 2007; and,

5.   that he filed a petition in state court on March 12, 2007 pursuant to

the Post-Conviction Relief Act, and that this petition was dismissed

on December 20, 2007; and,

6.   that the document submitted by petitioner, and received by this

Court on January 9, 2008, is a petition in this court seeking to

remove his criminal prosecution to this court pursuant to 28 U.S.C.

§§1443, et seq., and that he has a right to a hearing on the

allegations made, which would allegedly justify his release from state

custody.

II.   DISCUSSION.

Petitions filed pursuant to 28 U.S.C. §§1441-1453, which seek to remove

state criminal matters to federal courts, are not habeas corpus petitions. 28

U.S.C. §1446 permits defendants in criminal matters in state courts to remove the state

criminal case to federal court, provided that they can demonstrate that the state

proceedings are unconstitutional, or, for some reason, unfair. As they are criminal, and

not civil in nature, petitions seeking removal of a criminal matter pursuant to 28 U.S.C.

§§1441-1453 are supposed to be assigned a new criminal action number upon arrival

in the federal district court clerk's office, assigned to an Article III judge in conformity

with this court's rules and procedures; these matters get criminal numbers in this court

and do not get civil action numbers.

Accordingly, this   Day of January, 2008, it is hereby

ORDERED as follows:

1.   In keeping with both the relevant statutes, as well as petitioner's apparent

       intentions, 08-mc-004 shall be re-characterized for all purposes as a

       criminal matter, with a new criminal number, and that the Clerk of Court

       shall write the new criminal action number, in ink, on the caption of ***this***

       order.

2.   Document #1 in 08-mc-004 shall be re-characterized by the Clerk of this

       Court as also being Document #1 in the aforesaid new criminal action,

       and filed in that matter on January 9, 2008.

3.   This Memorandum and Order shall be characterized by the Clerk of this

       Court as Document #2 in 08-mc-004, and also as Document #2 in the

       aforesaid new criminal action.

4.   08-mc-004 is **DISMISSED WITHOUT PREJUDICE** to the arguments

       made therein being considered as part of the aforesaid new criminal

       matter.

5.   08-mc-004 shall be marked by the Clerk of this Court as **CLOSED** for all

       purposes, including statistics.

6.   The aforesaid new criminal matter shall be reassigned by the Chief Judge

of this Court to the calendar of another Article III judge of this Court, in

accordance with Local Rule of Criminal Procedure 50.1.

S/ JAMES T. GILES
JAMES T. GILES, U.S. District Judge